

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CECIL KOGER,

Plaintiff,

v.

DIRECTOR GARY C. MOHR, et al.,

Defendants.

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Case No. 4:17-cv-02409

Judge Benita Y. Pearson

**MOTION IN LIMINE TO PREVENT PLAINTIFF FROM ASSERTING ANY CLAIMS
AT TRIAL RELATING TO THE PICTURES TAKEN OF HIS DREADLOCKS OR HIS
ALLEGED INABILITY TO COMMUNE WITH OTHERS**

Pursuant to Federal Rules of Evidence 401, 402 and 403, Defendants respectfully move the Court for an Order prohibiting Plaintiff Cecil Koger (“Plaintiff”) from asserting any claims at trial relating to the pictures taken of his dreadlocks or to his alleged inability to commune with others. A memorandum in support is attached.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

/s/ Mindy Worly

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Counsel for Defendants

MEMORANDUM

At trial, Plaintiff, an inmate serving a life sentence at the Richland Correctional Institution (“RiCI”), may attempt to resurrect claims under RLUIPA, the First Amendment, the Fourteenth Amendment, and/or Fed. R. Civ. P. 35 concerning the pictures that were taken of his dreadlocks or his alleged inability to commune with others. With regard to Plaintiff’s Fed. R. Civ. P. 35 claim, finding that the district court did not rely on these photographs to reach any of its conclusions and that the pictures did not contribute to the record in any way relevant to the arguments of the parties, the Court of Appeals held that Plaintiff failed to show that his substantial rights were affected and, in doing so, affirmed the summary judgment decision of the trial court regarding Plaintiff’s grooming claims. *Koger v. Mohr*, 964 F.3d 532, 545-546 (6th Cir.2020).

Likewise, as to Plaintiff’s inability to commune with others (“grounding”) claims, not only did the Court of Appeals conclude that Plaintiff failed to develop an argument regarding this accommodation request, but also that it was unclear whether Plaintiff was appealing this aspect of the district court’s order. *Koger v. Mohr*, 964 F.3d 532, 542 (6th Cir.2020). Thus, finding that Plaintiff had not demonstrated a genuine dispute of material fact regarding his communing (“grounding”) claims, the Court of Appeals affirmed the district court’s summary judgment ruling in favor of the Defendants on this issue as well. *Id.*, at 542-543, 546

Because any “such references may unduly prejudice the jury against Defendants based on matters no longer at issue in this case,” *Silberstein v. City of Dayton*, Case No. 3:02CV522, 2007 U.S. Dist. LEXIS 4141 (S.D. Ohio 2007), Plaintiff should be precluded from making any reference to the pictures taken of his dreadlocks or to his alleged inability to commune with others at the trial of this matter.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion in Limine to Prevent Plaintiff from Asserting Any Claims at Trial Relating to the Pictures Previously Taken of His Dreadlocks or to His Alleged Inability to Commune with Others* has been electronically filed on September 13, 2021. Notice of this filing will be sent to counsel for all parties via the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Mindy Worly
Mindy Worly (0037395)
Principal Assistant Attorney General